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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,354	09/24/2001	Peter Robert Foley	7482M	7888

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EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/937,354

Applicant(s)

FOLEY ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 11-15, 17-22, 24, 25, 27-29 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1, 11-14, 17-22, 24, 25, 27-29 and 33-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed July 14, 2003. Applicant has amended claims 1, 11-15, 17-22, 24-25, 27-29, and 33. Claims 16, 23, 26 and 30-32 have been canceled. New claims 34-40 have been added. Currently, claims 1, 11-15, 17-22, 24-25, 27-29, and 33-40 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 5.
3. The objection of claims 16, 26, 32, 30 and 33 is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claims 11 and 22-32 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.
5. The rejection of claim 33 under 35 U.S.C. 112, second paragraph, is maintained for the reasons of record.
6. The rejection of claims 1, 11, 12, 17, 19-22, 24 and 27 under 35 U.S.C. 102(b) as being anticipated by Maguire, Jr. et al, U.S. Patent No. 4,090,973, is maintained for the reasons of record.

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7. The rejection of claims 1, 11-14, 17-22, 24-25 and 27-28 under 35 U.S.C. 102(b) as being anticipated by Aronson et al, WO 93/22417, is maintained for the reasons of record.

8. The rejection of claims 1, 11-14, 17, 19-22, 24-25 and 27-29 under 35 U.S.C. 102(b) as being anticipated by Tsaur et al, EP 653,485, is maintained for the reasons of record.

9. The rejection of claims 1, 11 and 16-18 under 35 U.S.C. 102(b) as being anticipated by Ahmed et al, U.S. Patent No. 5,108,641, is withdrawn in view of applicant's amendments and remarks.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 39-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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12. Claim 39 is rejected under 35 U.S.C. 112, second paragraph, for containing the listed color combinations. Specifically, the examiner asserts that the labeling of a color is an arbitrary decision. For example, the color blue may be seen as blue to one person and purple to another person. The examiner suggests that the colors disclosed in claim 39 should be amended to recite the color's wavelength properties (i.e. the observed color blue occurs at a wavelength of 600nm) to be considered definite.

13. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem (i.e. claim 39).

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 34 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Maguire, Jr. et al, U.S. Patent No. 4,090,973.

Newly added claims 34 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Maguire, Jr. et al, U.S. Patent No. 4,090,973, for the reasons of record found in the last Office Action, Paper No. 5, Paragraph No. 15.

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16. Claims 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Aronson et al, WO 93/22417.

Newly added claims 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Aronson et al, WO 93/22417, for the reasons of record found in the last Office Action, Paper No. 5, Paragraph No. 16.

17. Claims 34 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsaur et al, EP 653,485.

Newly added claims 34 and 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsaur et al, EP 653,485, for the reasons of record found in the last Office Action, Paper No. 5, Paragraph No. 17.

18. Claims 1, 11, 17-21, 34, and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Werth et al, DE 2,232,131.

Werth et al, DE 2,232,131, discloses a stable suspension of brittle bodies in a liquid suspension medium prepared by entraining the brittle bodies in a liquid vehicle, whereby the process is used in a preparation of detergent compositions that contained colored ingredients (see attached abstract of Werth et al, DE 2,232,131), per the requirements of the instant invention. Absent a full translation of the document, instant claims 1, 11, 17-21, 34, and 36-37 appear to be anticipated by Werth et al, DE 2,232,131.

Response to Arguments

19. Applicant's arguments filed July 14, 2003 have been fully considered but they are not persuasive.

Applicant argues that the recitation of the observed colors, such as blue, green, yellow, and white in instant claim 33 does not render the claims vague and indefinite. Applicant further argues that recent U.S. Patents 6,475,975, 6,479,448 and 6,486,111 contain claims that are defined by color components. However, the examiner maintains that the labeling of a color is an arbitrary decision, and that an observed color to one person may be viewed as a different color to a second person. Due to this arbitrary decision on the color of a component, the examiner maintains that the colors listed in instant claim 33 render the claim indefinite. With respect to U.S. Patents 6,475,975, 6,479,448 and 6,486,111, the examiner asserts that he is unfamiliar with the prosecution history of these patents, and thus, is unable to comment on how the colors recited in the claims were defined by either the examiner of record or the applicant.

Applicant argues that Maguire, Jr. et al, U.S. Patent No. 4,090,973, does not teach or suggest in general a particle comprising a hydrated polymeric coating serving as the encapsulating material, as required in the instant claims. However, the examiner asserts that Maguire, Jr. et al does indeed teach this limitation. Specifically, Maguire, Jr. et al discloses that the encapsulating material includes carboxymethyl cellulose, ethyl cellulose, and polyvinyl alcohol (see col. 4, lines 6-62 of Maguire, Jr. et al), which are the preferred hydrated polymeric coating materials required in the instant invention. Furthermore, the examiner respectfully asserts that the process steps required in claim

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1 of the instant invention requires providing a liquid detergent composition, and adding a hydrated polymeric coating to the detergent composition, which is clearly disclosed by Maguire, Jr. et al, U.S. Patent No. 4,090,973.

Applicant argues that Aronson et al, WO 93/22417, simply teaches a "web-like" capsule created by the hydrophilic molecules, which is too porous to protect the active compound. However, the examiner asserts that the teachings of Aronson et al meet the limitations of the instant claims. Specifically, Aronson et al clearly discloses that the liquid detergent composition is provided in a capsule polymer, such as polyvinyl alcohol and methyl cellulose (see page 17, line 17-page 20, line 21 of Aronson et al), which are the preferred hydrated polymeric coating materials required in the instant invention. Furthermore, the examiner respectfully asserts that the process steps required in claim 1 of the instant invention requires providing a liquid detergent composition, and adding a hydrated polymeric coating to the detergent composition, which is clearly disclosed by Aronson et al, WO 93/22417.

Applicant argues that Tsaur et al, EP 653,485, does not teach or suggest in general a particle comprising a hydrated polymeric coating serving as the encapsulating material, as required in the instant claims. However, the examiner asserts that Tsaur et al does indeed teach this limitation. Specifically, Tsaur et al discloses that an oil dispersion containing an active ingredient (i.e. a liquid detergent composition) in a polymer shell capsule (see abstract of Tsaur et al). It is further taught by Tsaur et al that the polymer shell capsule includes polyvinyl alcohol and cellulose (see page 3, lines 13-24 of Tsaur et al), which are the preferred hydrated polymeric coating materials

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required in the instant invention. Furthermore, the examiner respectfully asserts that the process steps required in claim 1 of the instant invention requires providing a liquid detergent composition, and adding a hydrated polymeric coating to the detergent composition, which is clearly disclosed by Tsaor et al, EP 653,485.

Allowable Subject Matter

20. Claim 15 is allowed for the reasons of record found in the last Office Action, Paper No. 5, Paragraph No. 19.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk
September 29, 2003

Brian P. Mruk

Brian P. Mruk
Patent Examiner
Tech Center 1700